

APPENDIX 21

Penn State Defendants' Documents in Support of
Motion for Summary Judgment/Statement of Facts

APPENDIX 21

101707PHscott

COMMONWEALTH OF PENNSYLVANIA: NO. CR-414-07

VS :

AUSTIN SCOTT :

TRANSCRIPT OF PROCEEDINGS

PRELIMINARY HEARING

BEFORE: DANIEL R. HOFFMAN,
MAGISTERIAL DISTRICT JUDGE

DATE: OCTOBER 17, 2007
11:00 A.M.

PLACE: CENTRE COUNTY COURTHOUSE ANNEX
COURTROOM NO. 1
BELLEFONTE, PA 16823

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8 FOR COMMONWEALTH MARKED PRODUCED

9 (NONE MARKED.)

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2 THE COURT: Are you gentlemen all set to
3 proceed?

4 MR. MARSHALL: Yes, Your Honor.

5 MR. KAROLY: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, if you
7 have a cell phone on, please turn it off. Anybody that
8 has a cell phone, please turn it off. Thank you very
9 much.

10 what we're here for is a Preliminary
11 Hearing. I have Austin Scott being the Defendant.

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12 OTN is K 586743-3. Is Defense going to waive reading?
13 MR. KAROLY: Your Honor, my name is Attorney
14 John Karoly. My ID Number is 22224. I'm here on behalf
15 of Mr. Scott. I would waive the formal reading of the
16 Complaint and the seven criminal surcharges that appear
17 therein, without waiving any substantive defects, and
18 enter a plea of not guilty. Also, as my assistant
19 counsel -- co-counsel locally, Mr. Amendola, as the
20 Court's familiar with.
21 THE COURT: Okay. Reading of the charges
22 having been waived, Commonwealth call their first
23 witness, please.
24
25

5

1 DESIREE MINDER, having been called as a
2 witness, being sworn, testified as follows:
3
4 THE COURT: You may be seated. You'll need
5 to talk right into that microphone. okay? It's really
6 touchy, so you need to pull right up on it.
7 MR. KAROLY: Your Honor, at this time, the
8 Commonwealth having identified their first witness, I
9 would move to sequester any remaining Commonwealth
10 witnesses.
11 MR. MARSHALL: The only other witness is
12 Brian Rodgers. I don't see him in the courtroom. He's
13 an Affiant -- oh, he's behind me -- as well as Janet
14 Cady, the Emergency Room nurse. I mean, if he really
15 wants the nurse out of the courtroom, that's fine.
16 MR. KAROLY: Thank you.

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17 MR. MARSHALL: Okay.

18 (Whereupon, the witnesses were sequestered.)

19 MR. KAROLY: Your Honor, I would also
20 respectfully request, although I've never seen it before
21 in my career, there are co-Affiants here. I'd ask that
22 the Commonwealth select a police prosecutor who may
23 remain during the course of this testimony. But the
24 other Affiant, I'd like to be sequestered as well.

25 MR. MARSHALL: Like he said, it's never been

6

1 done before. I think the Affiant has a right to be in
2 the courtroom. He's the arresting officer, and he
3 should be here.

4 MR. KAROLY: Well, I --

5 THE COURT: Just let me ask a question.
6 That wasn't just assigned then? Both of them are taking
7 the case?

8 MR. MARSHALL: Yes, Your Honor, both are
9 co-Affiants.

10 THE COURT: Okay. We're not going to
11 sequester them.

12 THE COURT: Would you like to begin?

13 MR. MARSHALL: Yes.

14

15 DIRECT EXAMINATION

16

17 BY MR. MARSHALL:

18 Q Ma'am, would you please state your name?

19 A Desiree.

20 Q And, Desiree, how old are you?

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21 A I am 22.
22 Q And are you a Penn State student?
23 A Yes.
24 Q And when do you anticipate graduating?
25 A Next year -- or at the end of this year, so

7

1 in the Spring of '07.

2 Q Spring of '08?

3 A Or '08, yes.

4 Q And what kind of degree do you --

5 A I'm in Crime Law Justice with attention with
6 Prelaw.

7 Q Do you know the person that's seated to my
8 right (indicating)?

9 A Yes.

10 Q What's his name?

11 A Austin Scott.

12 Q And can you describe your relationship with
13 him? And kind of go in-depth, beginning with when you
14 first met him and how much contact you had with him.

15 A About two months ago, he came into my -- where
16 I work. I'm a bartender downtown, and he came in --

17 Q Let me stop you right here. Where are you a
18 bartender at?

19 A It's called Beulah's and Bar Bleu.

20 Q All right. He came into your bar a couple
21 months ago?

22 A Yes.

23 Q Describe what happened.

24 A I guess -- he came in with another girl and
25 just introduced himself and talked casually, nothing big

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8

1 about -- a little bit after that, I was walking down the
2 street on my way to campus when --

3 MR. KAROLY: I'm sorry, Your Honor. I'm
4 having trouble hearing.

5 THE COURT: You'll have to pull that up.
6 (witness complies.)

7 THE COURT: There you go. You need to be
8 about two inches from it.

9 THE WITNESS: Okay. I was walking down the
10 street going to campus, when he approached me on the
11 street and stopped me; I guess he had remembered me, and
12 reintroduced himself and asked me for my phone number
13 and said that he'd like to hang out and whatnot. We
14 talked casually about -- I think the first time I met
15 him he talked about his tattoo on his back and we talked
16 about that a little bit and then I started to go to
17 class. Later that day, I received a text message from
18 him. And then from that point forward, it was just
19 casual conversation through text messaging. I think we
20 talked on the phone maybe once or twice.

21 BY MR. MARSHALL:

22 Q So in that two-month time period, had you --
23 how much face-to-face contact with him did you have?

24 A None.

25 Q Okay. How many text messages do you think you

9

1 sent back and forth?

2 A He text messaged me almost every single day.

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3 Q What about other forms of communication, like
4 e-mail --

5 A No e-mail. He did call me once when he was at
6 an away game; but other than that, nothing.

7 Q I want to turn your attention now to the late
8 evening of October 4th and the early morning hours of
9 October 5th of 2007. What were your plans for the
10 evening?

11 A Well, originally -- I had planned to go with
12 my friend, Nancy. It was the first day I had a Thursday
13 off of work, and a lot of my friends were upset with me
14 because they hadn't seen me in a while. So my friend
15 Nancy came and picked me up and then we went to her
16 house. When I was asked -- earlier, I think the night
17 before, Austin asked me if I wanted to hang out with
18 him; but still I wanted to go out with Nancy and went
19 with her to a bar downtown.

20 Q What was the name of the bar?

21 A Tony's Big Easy.

22 Q Okay. What time did you arrive there?

23 A We went to her house first. We were there for
24 about a half-hour, 45 minutes, maybe an hour at the
25 most. I think we got to Tony's around 10:30 or so, and

10

1 then -- so I was there with her and a couple of other
2 people, and then I --

3 Q Do you recall the names of those other people?

4 A I didn't know them to see -- I mean, most of
5 them were Nancy's friends; and then obviously there was
6 people that I knew there, also.

7 Q Okay. So you got to Tony's about 10:30. How
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8 long were you there and what did you do then?

9 A I'm not sure exactly how long I was there, at
10 least until, I'm going to say, 11:30, quarter -- 12:00,
11 somewhere around there, when I decided that I was going
12 to go to another bar where I know a lot of people who
13 work there and my friends left; so I went to another
14 bar.

15 Q And what bar was that?

16 A It's the Saloon.

17 Q Okay. And what time did you arrive at the
18 Saloon?

19 A I'm not positive of the time. It was
20 somewhere around 12:00. I remember looking at the clock
21 and it was still early. I think it was somewhere in
22 between 12 or 12:30 and 12:45, so I stayed there for a
23 little bit. And when I went to go use the restroom --
24 and in order for me to get cell phone service, I have to
25 use the restroom over at the Deli, which is connected to

11

1 the Saloon. And I always use that bathroom, because the
2 lines at the Saloon are horrible and I don't -- it takes
3 like a half-hour just to use the restroom, so I went to
4 the Deli. When I started -- I'm not sure who initiated
5 the conversation, but I started communicating with
6 Austin about hanging out again. We had talked earlier
7 about it.

8 Q Okay. Describe that earlier conversation you
9 had with Austin about hanging out this particular night.

10 A well, since we had made plans to hang out
11 beforehand, he asked me what I was doing. It was on the

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12 way to Nancy's house, actually. He had asked me what I
13 was doing. I told him that I was now at the saloon, and
14 I described that I was starting to get a little bit
15 drunk, not bad though; but I started feeling -- I was by
16 myself -- I mean, I was with people that I knew, but
17 they were all working. So, at that time, he asked me if
18 I wanted to meet; and I said, sure, I guess so. Come
19 get me. So then I went back down to the saloon and
20 continued talking to my friends that were working, and
21 Austin had come down to get me. Next thing I knew, I
22 saw him in the bar walking around and --

23 MR. KAROLY: Again, Your Honor, I'm sorry.
24 Her last -- could I ask that the answer be repeated, or
25 at least the last part of it?

12

1 MR. MARSHALL: You had mentioned Austin came
2 into the saloon.

3 THE WITNESS: He came into the saloon. I
4 saw that he was looking for me, so I went over to find
5 him. And I went over and then closed my tab at the
6 saloon and then grabbed my purse and I left with him.
7 BY MR. MARSHALL:

8 Q Approximately, what time did Austin arrive at
9 the saloon?

10 A I think it was a little after 1. Like I said,
11 around 1:15 or so, maybe 1:30. I'm not sure. And then
12 we started walking towards his house.

13 Q Now, as you were -- or while you were at the
14 saloon and before you started walking to Austin's house,
15 are you feeling the effects of the alcohol that you had
16 consumed that night?

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17 A I mean, not much. I was feeling the effects,
18 but not -- like, I just remember being extremely tired,
19 I guess, from working so much and then the alcohol just
20 started to put me asleep, so that's about it.

21 Q Okay. Do you recall how much alcohol you had
22 to drink that night?

23 A Yes, I do.

24 Q How much alcohol?

25 A At Tony's Big Easy I had seven -- it's a

13

1 little -- each glass is a little bit under a shot of
2 vodka with cranberry. I had seven glasses of those, as
3 well as one shot. And then at the Saloon I had about a
4 half of -- it was a vodka with cranberry and pineapple
5 as well. I had about half a glass.

6 Q So based upon your working at Bar Bleu, you
7 pretty much know how much alcohol you had to drink?

8 A Yes.

9 Q And, again, can you say how many servings it
10 was?

11 A If you base a serving off of a shot, I
12 probably had about three-quarters of a shot of Crown
13 Royal; and then throughout the night, I probably had
14 about four shots -- four or five shots of vodka, give or
15 take.

16 Q Okay. And this is between 10:30 and 1:30 in
17 the morning?

18 A Yeah. Yes.

19 Q Now, as you're walking home with Austin,
20 describe the conversation that you had with him.

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21 A Umm, we were walking; and when I was -- I
22 stopped him and I just let him know that I wasn't going
23 to have sex with him.
24 Q Let me stop you right there. What did you say
25 to him?

14

1 A I said, "Just so you know, I'm not going to
2 have sex with you."
3 Q Okay.
4 A And then I told him how that's not the kind of
5 person I am. I don't know what his intentions are, but
6 that's not what I was going to do. And he kind of
7 laughed and he's like, "Do you want me to call you a
8 taxi?" And I said, "Sure." And then he said, "Well,
9 could I at least cop a feel?" And I thought he was
10 joking at this point, so I laughed and I said, "No."
11 And we started walking again at this point, and
12 something interrupted our conversation, I guess someone
13 who knows him, and they started talking; and he talked
14 the whole time while we walked to Austin's room.
15 Q Now, as you're walking to Austin's home, are
16 people on the street kind of saying stuff to him?
17 A Yeah. There was -- I know at one point
18 somebody screamed out, "Austin." I'm not even sure what
19 his exact words were, but it was something about Austin
20 and his playing ability and about him just being on the
21 football team in general; and I laughed and I made a
22 comment --
23 MR. KAROLY: Again, Your Honor, I owe it to
24 my client to be able to hear what she's saying. That's
25 so muffled, I couldn't hear the last sentence at all.

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15

1 MR. MARSHALL: You were talking about what
2 people were saying to you and -- or at least Austin, as
3 you're walking home.

4 THE WITNESS: Yeah. People made comments
5 about just how he -- something about him playing. I
6 never really paid attention to it; and I made a comment
7 to Austin like, "Oh, I didn't realize I was hanging out
8 with a celebrity." And the next thing you know, "That's
9 not going to fly with me." And he just kind of laughed;
10 and he's like, "No, it's not like that."

11 THE COURT: Excuse me a second. Can you
12 hear that? I guess it's different for me. I can hear
13 her fine, but I'm right on it.

14 MR. KAROLY: I know we can't change seats,
15 Judge, and I apologize; but I honestly -- at this point,
16 none of us can hear what she's saying.

17 MR. MARSHALL: I don't know what to say. I
18 can hear her.

19 THE COURT: Well, there was trouble with
20 that table before. Is there any way to turn that up?

21 (A discussion was held off the record.)

22 THE COURT: Try sliding it even closer to
23 you. You were about an inch away before and your voice
24 was perfect.

25 THE WITNESS: Okay.

16

1 THE COURT: Okay? Don't get upset about it.
2 We just all need to hear. Okay? Can you pull that to

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3 you just a little bit more, just right up to you.

4 (Witness complies.)

5 THE COURT: Okay. Talk right into that
6 about an inch away.

7 THE WITNESS: Okay. Is this good?

8 MR. KAROLY: I guess we'll find out. I
9 don't know. The last thing I remember, "No, it's not
10 like that" by Mr. Scott. That's the last thing we
11 heard.

12 THE WITNESS: And then at that point, we
13 just continued walking; and Austin carried on a
14 conversation with this person that I don't know. The
15 person was pretty drunk. He was talking about
16 McDonald's food and just random stuff, and we also
17 talked about cell phones; and that's basically it.

18 BY MR. MARSHALL:

19 Q How long did you walk alone with Austin
20 without this third person?

21 A Not at all. This person walked the entire
22 time. The only time I was alone with Austin up to that
23 point was from the block from the Saloon to the block
24 right in front of McLanahan's.

25 Q So you get to Austin's apartment?

D

17

1 A Yes.

2 Q Do you recall where that was?

3 A All I know it as is the Nittany Apartments on
4 campus. That's all I recall about it.

5 Q Okay. And was it just you and Austin then
6 that went inside the apartment?

7 A The other person split from us about 30
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8 seconds before we went into the apartment, but it was
9 just Austin and I walking into his apartment.

10 Q Had you ever been in this apartment before?

11 A No.

12 Q Did you see anyone else in the apartment?

13 A No.

14 Q Were you introduced to anyone else in the
15 apartment?

16 A No.

17 Q What happened when you got into the apartment?

18 A At that time, we went into the bedroom and we
19 turned on the TV. He said he was going to use the
20 restroom, and told me to make myself comfortable
21 basically. I --

22 MR. KAROLY: Again, Judge, I'm sorry. I'm
23 going to have to ask her to repeat that answer, because
24 we didn't hear it.

25 MR. MARSHALL: I don't know what to say. I

18

1 can hear her fine.

2 THE COURT: Just reask the question, please.

3 BY MR. MARSHALL:

4 Q What happened when you got inside the bedroom?
5 The last I heard was about the bathroom -- him going
6 into the bathroom.

7 A He went to go use the bathroom, and I just
8 stood there standing and I was looking at a Muhammad Ali
9 poster on his wall; and I was just looking at that.
10 Then he came back, and then we sat down on his bed and
11 started talking and were watching TV.

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12 Q Do you recall what was on the TV?

13 A It was -- I think it was the Discovery

14 Channel. It was something about tribes in Africa.

15 Q While you're watching TV, what are you

16 wearing?

17 A I took off my shoes and my socks. I had on

18 jeans, underwear, and I had on a tube top and I didn't

19 have a bra on.

20 Q How long did you watch TV for?

21 A I'm not certain. The whole time we were

22 talking while the TV was on, and then I started to fall

23 asleep.

24 Q Are you having trouble staying awake?

25 A Yeah. The whole time I was fighting it. I

19

1 was trying to keep my eyes open, and we just started to

2 converse about things in general.

3 Q About what time do you think you fell asleep?

4 A I don't know.

5 Q Again, when you fell asleep, what were you

6 wearing?

7 A My shirt, (indicating) my jeans, and my

8 underwear.

9 Q Okay. When you fell asleep, are you on top

10 of the covers, underneath the covers?

11 A I can't recall the situation. I know that he

12 was under the covers. I don't remember where the

13 blanket was at that point. I'm almost certain it was on

14 top of me or else it was like pushed to the side.

15 Q Now, was Austin's bed up against the wall?

16 A It is. It's on back of the wall and also the

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17 side of the wall. He was laying on the inside. I was
18 laying on the outside next to the door. The door was
19 about a foot and a half to two feet away.

20 Q Now, you fell sleep. What's the next thing
21 that you remember happening?

22 A Something started to wake me up, and that's
23 when I was kind of startled. And I looked up and Austin
24 was (indicating) like kneeling towards me and he was
25 trying to have sex with me through my underwear.

20

1 Q Can you describe what he was doing?

2 A He was pushing his penis into my vagina with
3 my underwear in between so that my underwear was also
4 going inside of me.

5 Q What happened next?

6 A I started to sit up forward to say no and try
7 to stop the situation, when I felt a punch in my back in
8 the kidney area; and then --

9 Q Let me stop you. Did you actually say no?

10 A The words definitely came out of my mouth.

11 MR. KAROLY: Again, I'm sorry. Can you
12 repeat that?

13 THE WITNESS: Yes. I said no.

14 BY MR. MARSHALL:

15 Q You said the words definitely came out of your
16 mouth?

17 A Yes.

18 Q How hard was the punch to your kidney?

19 A At the time it was enough to hurt pretty bad.
20 It just set me into shock.

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21 Q After you were punched in the kidney, what did
22 you do next?

23 A I immediately just laid back down, and I felt
24 pressure on my arms and then he continued what he was
25 doing.

21

1 Q what was he doing?

2 A He was trying to have sex with me through my
3 underwear, and then -- and then he took my underwear off
4 and started having sex with me again. This time he was
5 fully in me.

6 Q And I'm sorry to say this. But when you say
7 "he was fully in you", what do you mean?

8 A His penis was in my vagina.

9 Q How long did that go on for?

10 A Umm, probably -- I'm not certain of the time.
11 I mean, it felt like forever; but I don't know.

12 Q You said earlier you felt pressure on your
13 arms. Was his chest on your chest or --

14 A It was kind of set back a little bit. Umm, I
15 don't know. It was maybe -- it seemed like he was about
16 a foot and a half away from his chest was away from
17 mine, and he had most of his pressure on -- he was
18 holding me down with this arm (indicating). I felt the
19 pressure onto this arm of mine.

20 Q okay. So you're indicating most of the
21 pressure --

22 A Was on my left arm.

23 Q With his right hand -- with his right arm?

24 A Yes. There was pressure on this arm, but it
25 was more so (indicating) -- I had more of a pressure on

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22

1 my left arm.

2 Q okay. And what happened next?

3 A Umm, then he kind of like flipped me over and *
4 said get on top of him; so I did what he said.

5 Q So what happened?

6 A He made me get on top, and he put his penis in
7 my vagina when I was on top of him.

8 Q And where are his hands when he's doing this?

9 A On my back.

10 Q And how long did this go on for?

11 A I'm not sure.

12 Q Okay. what happens next?

13 A He flipped me over again and put me on my
14 back; but at this time he like grabbed a towel. Put the
15 towel underneath me and then started having sex with me
16 again, putting his penis in my vagina.

17 MR. KAROLY: Couldn't hear that, Judge.

18 THE WITNESS: He put his penis in my vagina.

19 BY MR. MARSHALL:

20 Q What made -- how did this stop?

21 A Umm, the whole --

22 Q Yes. How did the sexual intercourse stop?

23 A I don't know. I'm not even sure. The whole
24 time I was pretty much just staring at the ceiling and
25 then after a while I started to cry, and I told him it

23

1 was hurting me. I just couldn't take it anymore.

2 Q I'm sorry. Did you actually say the words --

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3 did you tell him that he was hurting you?

4 A I said it was hurting.~~X~~

5 Q You told him that?

6 A Yes.

7 Q And what was his response?

8 A Nothing really. He continued, and then he
9 laid down. He eventually got off, and laid down next to
10 me. And then I waited until he fell asleep, and then I
11 tried to sneak out.

12 Q Let me go back to the hurting question very
13 quickly. What specifically -- what part of your body
14 was hurting?

15 A My vagina and my hips.

16 Q Okay. You said he stopped, rolled over, and
17 you think fell asleep. What did you do next?

18 A At that time, I tried to sneak out without
19 waking him. I was on the inside of the bed and he was
20 on the outside of the bed, and I scooted down to the end
21 of the bed and I tried to grab all my stuff as quickly
22 as possible without making any noise. And I had my hand
23 on the doorknob when he woke up, I guess to his phone
24 ringing or vibrating on the table.

25 Q Okay. And so what happened?

□

24

1 A He made a comment -- he started asking me
2 questions of where am I going, asking me why am I
3 leaving? And I kept telling him, I'm like, I can't stay
4 here. And he started to like lean up forward, and so I
5 kissed him and I ran out.

6 Q After you ran out -- approximately, what time
7 did you run out of the apartment?

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8 A I have no idea.

9 Q As you're running out of the apartment --

10 MR. KAROLY: Objection to the "running out
11 of the apartment". That's the District Attorney's
12 words, not hers.

13 THE WITNESS: I said I ran out.

14 THE COURT: Okay.

15 BY MR. MARSHALL:

16 Q Okay. As you're running out of the apartment,
17 what are you doing?

18 A I was shuffling for my phone; and as soon as
19 the door shut behind me, that's whenever I called my
20 friend and also he's my manager.

21 Q Okay. Which friend did you call?

22 A Keith Lesho.

23 Q Okay. And he's a manager where?

24 A At Beulah's Bar Bleu.

25 Q And what did you tell your friend Keith?

□

25

1 A I just remember crying a lot, and I told him
2 -- I started telling him about the incident. He started
3 -- he knew something was wrong with me instantly and he
4 tried to calm me down and just kept asking me what
5 happened. And I told him that Austin hurt me. And he
6 kept saying where are you. I'm coming to get you now.
7 And then I think he just asked me, like, what happened.
8 And, at that point, I was just walking and somebody
9 tried to approach me on the street to see if I was okay
10 because he saw that I was crying. And he's like, "Just
11 hang on. I'll be right there." And I could hear him

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12 yelling to his girlfriend in the background to get the
13 keys and stuff to the car. So he hung up with me. When
14 I hung up with him I called Nancy, because I didn't want
15 to be walking with, you know -- just crying. So I
16 called Nancy and she kept asking me what's wrong, and I
17 told her what happened and she tried to keep me calm.
18 And she said, "Are you -- "do you want someone to come
19 and get you?" I said, "Keith is going to be here any
20 second." At that time, I got a phone call from Keith
21 that interrupted the conversation; and I told her that I
22 would call her later. And Keith had called me and said
23 that he was walking onto campus --

24 Q Where did you run into Keith and your friend?

25 A On Shortlidge.

26

1 Q Were the police called?

2 A Yes.

3 Q Do you know who called the police?

4 A I'm not sure. I was just handed -- I don't
5 know who actually dialed the number, but I was handed
6 the cell phone from Keith's girlfriend, Sara.

7 Q Okay. But you didn't actually call the
8 police?

9 A No.

10 Q Did a police officer arrive there at
11 Shortlidge?

12 A Yes, two police officers.

13 Q Okay. And you told them what happened?

14 A Yes.

15 Q Where did you go after you told the police
16 what happened?

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17 A The police officers took me to Mount Nittany
18 Hospital where I got a rape kit done.

19 Q Okay. And just jumping ahead a little bit to
20 -- after the hospital, did you go back to the Eisenhower
21 Police Station?

22 A Yes, I did.

23 Q And did you participate in what's called a
24 consensual wiretap?

25 A Yes, I did.

27

1 Q And did you call Austin?

2 A Yes, I did.

3 Q And that phone call was recorded?

4 A Yes.

5 MR. MARSHALL: That's all, Your Honor.

6 THE COURT: Cross.

7 MR. KAROLY: Thank you, Your Honor.

8

9 CROSS-EXAMINATION

10

11 BY MR. KAROLY:

12 Q Miss Minder, how long have you been on the
13 Penn State campus?

14 A I have been on campus since the Spring
15 Semester of, I guess, maybe -- in December it will be
16 finishing out my second year there.

17 Q Since the Spring Semester of when?

18 A I guess it would be '06.

19 Q And you told the Judge that when somebody on
20 the street complimented Austin on his football play,

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21 that you knew nothing about it. You didn't know who he
22 was or --

23 A No, I knew who he was.

24 Q Just please listen to my question before you
25 answer. Did you say that you didn't know who he was?

0

28

1 A No.

2 Q okay. Did you know he was a football player?

3 A Yes, he had told me.

4 Q Did he tell you when he was a football player?

5 A No.

6 Q And when did he tell you he was a football
7 player?

8 A In one of our previous conversations. I guess
9 the first time he ever came into the bar, the manager
10 was standing there and -- as well as I, and I guess that
11 he came in talking about him playing football.

12 Q And this was two months prior to this event?

13 A Umm, I'm not sure of the exact time; but
14 probably about two months before, maybe a little bit
15 more.

16 Q Okay. So when you said that you really didn't
17 pay any attention to that when somebody said he was a
18 football player; you knew he was a football player
19 before you went out with him, right?

20 A Yes.

21 Q Yeah. And you said, "I didn't realize you
22 were a celebrity." You realized what celebrity status
23 he had on campus, didn't you?

24 A Not really.

25 Q Not really. Do you ever attend Penn State

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□

29

1 football games?

2 A No, I do not.

3 Q Did you ever watch it on TV?

4 A I work during the football games. I work --
5 we're extremely busy. I've seen it on TV, but I don't
6 really pay attention.

7 Q And in your prior conversations with Austin
8 where the people surrounded him, did you hear them
9 talking football?

10 A Are you -- which night is this?

11 Q At any time.

12 A Umm, just the first time I met him.

13 Q Now, you gave him your phone number; is that
14 right?

15 A Yes.

16 Q When did you do that?

17 A This was, I think, about my second time
18 meeting him on the street when classes first had
19 started, like the first or second week of classes at
20 Penn State.

21 Q You mean you saw him for the first time when
22 you were bartending; is that right?

23 A Over the summer, yes.

24 Q Okay. And that was at Bar Bleu?

25 A Yes.

□

30

1 Q And the second time that you met, which was a
2 personal meeting, just bumping into him on the street,

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3 you gave him your phone number?

4 A Yes.

5 Q You wanted him to contact you, right?

6 A I didn't really care either way, but --

7 Q You gave him your phone number, but you didn't
8 care either way?

9 A No.

10 Q Are you in the habit of giving out, to
11 somebody who you met just for the second time, your
12 phone number?

13 MR. MARSHALL: Objection; irrelevant.

14 MR. KAROLY: I don't believe so, Your Honor.

15 MR. MARSHALL: Of course it's irrelevant.

16 what difference does it make?

17 MR. KAROLY: Well, this goes to motive, Your
18 Honor. And as you can tell from the Affidavit of
19 Probable Cause, there's a consensual defense.

20 THE COURT: We'll go with that question. Go
21 ahead and answer that question. Do you want to repeat
22 it for her?

23 MR. KAROLY: Can we have it read back, Your
24 Honor? This is one time we get to make sure the
25 stenographer's really taking something down.

31

1 THE COURT: Just the very last one.

2 (The court reporter was asked to read back a
3 referred-to portion of testimony.)

4 THE REPORTER: Bear with me through the
5 objection.

6 MR. KAROLY: It started out with --

7 THE COURT: The question was similar to, "Do
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8 you give your phone number to people who you don't want
9 to call you?", something along that line.

10 MR. KAROLY: Let me just repeat the question
11 that way. I think it was, Are you in the habit --

12 BY MR. KAROLY:

13 Q Are you in the habit of giving your phone
14 number to people who you don't want to call you?

15 A No.

16 Q Do you hand it out to people on the street
17 ordinarily?

18 A If I met them before --

19 Q So if somebody comes to your bar when you're
20 bartending, that's enough and you give them your phone
21 number and there's a --

22 A It depends on the situation. In the case of
23 Austin, we talked for quite a while and we had a
24 friendly relationship; so I gave it to him.

25 Q When did you talk to him for quite a while?

32

1 A When he came in the first time.

2 Q You were attracted to him, weren't you?

3 A No.

4 Q No?

5 A No.

6 Q So to fast-forward, you go at 2:00 in the
7 morning back to Austin's bedroom, but you weren't
8 attracted to him. Is that your testimony?

9 A Yes.

10 Q Pardon me?

11 A Yes.

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12 Q Do that very often, do you?
13 MR. MARSHALL: Again, Your Honor, I'm going
14 to object. This is completely inappropriate.
15 THE COURT: You don't have to answer that.
16 The objection's sustained.
17 BY MR. KAROLY:
18 Q You said that in answer to one of the
19 questions, that Austin faxed you continuously -- I'm
20 sorry, text you continuously for a period of time.
21 Remember that answer?
22 A Yes, I do.
23 Q What period of time are you referring to?
24 A From the period of time that he asked me for
25 my cell phone number to October 4th or --

33

1 Q And, again, you indicated he texted you.
2 A Yes.
3 Q Did you text him?
4 A I always replied to him, and twice I initiated
5 the conversation.
6 Q Okay. How many -- tell the Judge how many
7 text messages went back and forth between you and
8 Austin.
9 A I have no idea.
10 Q Not even an ability to approximate?
11 A No.
12 Q Now, on October the 4th, did you tell us that
13 you didn't work that day?
14 A No, I did not. It was my first day off in a
15 while.
16 Q Okay. Remember later on when you told the

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17 Judge that you were very tired from working?

18 A Uh-huh.

19 Q But if you didn't work that day, how could
20 you have been very tired from working?

21 A Because I'm a full-time student and I put a
22 lot of hours in at work. It just builds up after a
23 week. When I do get a day off, I'm usually pretty
24 tired.

25 Q I see. What time did you get up on the 4th?

34

1 A I know it was a Thursday and I had class at
2 9:45, so I woke up at -- I had class that day, so I
3 think I got up at around actually -- I woke up that
4 day -- I had to be in Bellefonte at 8:30, so I woke up
5 at like 7:30 that day.

6 Q Okay. Did you have any other classes besides
7 that one?

8 A I have two classes on Thursday. I think I
9 actually missed my first class, because I had somewhere
10 else to be on that Thursday.

11 Q That was my question. Where were you that
12 Thursday morning?

13 A I went to Bellefonte District Court for a
14 hearing over a traffic violation.

15 Q I heard you went to some Court for a traffic
16 violation.

17 A I went to the District Court in Bellefonte for
18 a hearing.

19 Q For your hearing?

20 A Yes.

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21 Q And you were the Defendant in that case?
22 A Yes.
23 Q And who did you go with?
24 A Myself.
25 Q Okay. And what did you do after the hearing?

35

1 A I went back and I took a little bit of a nap
2 for about a half-hour and then I went to class.
3 Q What did you do after class?
4 A I'm not certain, but I know I went back to my
5 apartment.
6 Q Did you go back there again?
7 A I'm sorry?
8 Q Did you nap there again?
9 A I don't remember.
10 Q By the way, your apartment -- do you have an
11 apartment of your own?
12 A Yes, I do.
13 Q And where's that located?
14 MR. MARSHALL: Objection; irrelevant.
15 MR. KAROLY: I believe, Your Honor, it's
16 very relevant, given the opportunity to go to her
17 apartment rather than Mr. Scott's apartment.
18 THE COURT: Objection's sustained.
19 BY MR. KAROLY:
20 Q Was your apartment within walking distance of
21 the Saloon?
22 A No, it's not.
23 Q It's not?
24 A No.
25 Q So how did you get to the Saloon?

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1 A My friend Nancy picked me up and drove me
2 downtown to her house.

3 Q And when did Nancy leave the Saloon?

4 A She never went to the Saloon. I went to the
5 saloon by myself.

6 Q So you indicated to us that she was a good
7 friend of yours?

8 A Yes, she is.

9 Q And you didn't have an opportunity to spend
10 much time with her?

11 A No.

12 Q And this was the first day you had off, so
13 you wanted to spend that time with her, right?

14 A Yes.

15 Q And yet you left her at another bar and went
16 by yourself to the saloon?

17 A Yes, I did.

18 Q Why'd you do that?

19 A Because I wanted to see some of my other
20 friends.

21 Q And you left your good friend Nancy back
22 where?

23 A She stayed at Tony's Big Easy with some of
24 her other friends.

25 Q Okay. And you went to see, you said several

37

1 times, your friends at the Saloon. Who are those people
2 you went to see?

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3 A They all work there. I know them because
4 we're owned by the same company. They're all bartenders
5 there and also door staff.

6 Q Okay. Who are they? What are their names?

7 MR. MARSHALL: Objection; irrelevant.

8 MR. KAROLY: The Commonwealth asked the
9 names of individuals she identified as her friends, and
10 I'd like to know who her friends were at that bar.

11 THE COURT: How does it make what your
12 client is being charged with either more probable or
13 less probable? This isn't a trial. This is just a
14 Preliminary Hearing.

15 MR. KAROLY: I understand, Your Honor. It's
16 part of the fabric of the events that took place over a
17 several-hour period, and we're just trying to give the
18 Court the full picture here.

19 THE COURT: Well, what I'm here to do is to
20 see if the Commonwealth can show the elements of these
21 charges. There's no guilt or innocence. Okay? And so
22 how does who her friends are either negate that or not
23 negate it? It doesn't. And your objection's sustained.
24 You don't have to answer that question.

25 BY MR. KAROLY:

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1 Q Okay. Now, did I understand you correctly
2 that you didn't recall the times, except that you
3 believe that you were at Tony's at 10:30 p.m.; is that
4 right?

5 A We got there somewhere between 10:30 and 11.

6 Q 10:30 and 11. You stayed there how long, did
7 you say?

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8 A I'm not sure what time I left there.
9 Q well, approximately?
10 A Approximately, an hour and a half or so.
11 Q And then you left by yourself to go to the
12 saloon, correct?
13 A Yes.
14 Q And how long did you stay there?
15 A I'm not certain. I'm not sure.
16 Q Could you approximate for the Judge how long
17 you stayed there?
18 A Maybe an hour or so.
19 Q Now, where were you when you had text
20 communications? where were you physically when you had
21 text communications with Austin?
22 A In the bathroom at the Deli.
23 Q You text him while you were in the bathroom
24 using the facility?
25 A Some was in the bathroom, some was on the

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1 steps at the Saloon.
2 Q Okay. And you were asked at that time how
3 would you describe the extent to which you were affected
4 by the alcohol you had and bought. Do you recall that?
5 Not in those words.
6 A Yes.
7 Q And you said, "I was a little drunk, but not
8 bad, not bad at all." Is that your testimony?
9 A I was starting to have effects, but I
10 wasn't --
11 Q And the only effects that you noticed were

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12 that you were getting tired?
13 A That was the main effect, yes.
14 Q Okay. And it didn't affect your ability to
15 text, correct?
16 A No.
17 Q Okay. And instead of saying -- well, did you
18 tell Austin that you were a little bit drunk?
19 A Yes, I told him that I was getting drunk.
20 Q And is that the words that you remember
21 texting to him?
22 A No.
23 Q Were the words something like "I'm all fucked
24 up"? Were those the words you text him?
25 A Something like that, yes.

40

1 Q Yeah. He never used that language in any text
2 to you, did he?
3 A No.
4 Q No. Did you tell Austin to come and get you
5 at the Saloon?
6 A Yes, after he asked if I wanted to leave. I
7 said, I guess I kind of -- I said, Come get me.
8 Q Okay. So you told Austin, who you understood
9 was where, at his apartment?
10 A He had told me in a text message that he was
11 downtown and asked me where I was at, and this was part
12 of the communication.
13 Q Okay. I'm talking about at the time that you
14 text Austin and asked him to pick you up and you were
15 sitting in the bathroom at the Deli --
16 A Uh-huh.

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17 Q -- did you know where he was texting from?
18 A From downtown.
19 Q Did you know if he was texting from downtown
20 at his apartment?
21 A That's what he -- he told me downtown, so I
22 assumed he was somewhere downtown, meaning along College
23 Avenue.
24 Q Okay. So you wanted him to come and pick you
25 up. And did you tell him what you wanted him to do with

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1 you once he picked you up?
2 A No. No.
3 Q Now, the saloon that you were at closes at
4 2:00; is that right?
5 A Yes.
6 Q Do you know what time this text message was
7 where you told Mr. Scott to pick you up?
8 A No.
9 Q Can you approximate for the Court?
10 A I really don't know.
11 Q Okay. Did Mr. Scott -- Did Austin show up at
12 the saloon?
13 A Yes, he did.
14 Q And what were you doing at the time?
15 A I was standing in the corner talking to Bean
16 (phonetic), a friend of mine, and just talking with
17 friends.
18 Q And you saw Austin walk into the saloon?
19 A Uh-huh.
20 Q And immediately you went to him; is that

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21 right?

22 A Yeah, I saw he was looking around like looking
23 for me; so I went over and got him.

24 Q Okay. And what did you say to him when you
25 went over and got him?

42

1 A I went up and closed my tab -- usually it's
2 loud in the saloon so you couldn't really communicate.
3 So I just closed my tab, grabbed my purse, grabbed my
4 belongings and we left.

5 Q Okay. Well, it was loud in the saloon so you
6 couldn't communicate, is that what I just heard you say?

7 A Yes. I mean, when you're walking, it's hard
8 to talk to somebody; you have to lean over and say
9 something to them, so --

10 Q Well, isn't that how you spent your entire
11 time at Tony's and then at the saloon, and that was
12 talking to people?

13 A Yes, the bartenders would stand right next to
14 me and they'd have to literally talk in your ear. And I
15 was walking and talking, so I can't do that.

16 Q Okay. What do you mean you were walking --

17 A He was walking behind me. I was leading him
18 through the crowd. I grabbed his hand and was leading
19 him through the crowd, because there was a lot of people
20 crowded by the bar where all my stuff was.

21 Q You grabbed his hand and took him through the
22 crowd into the saloon where you and your drink were
23 located; is that right?

24 A He was already in the saloon, but I went from
25 -- he was standing at one part of the bar where there

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1 wasn't a lot of people. I went over, grabbed him by his
2 hand, and led him through the crowd.

3 Q Okay. So you went from where there was no
4 people and presumably less noise so that you could talk
5 to him there, instead grabbed his hand and took him to
6 the crowded portion of the bar; is that right?

7 A That's where my stuff was, yes, and also where
8 all the bartenders stand.

9 Q But did you want to talk to the bartenders, or
10 did you want to talk to Austin?

11 A I had to close my tab.

12 Q Okay. So you closed your tab and left
13 immediately?

14 A I said goodbye to the bartenders, and told
15 them I'd probably see them tomorrow.

16 Q And how long did that take, the entire
17 grabbing Austin's hand, holding him, and leading him
18 through the crowd, until you paid your tab?

19 A Not very long.

20 Q A minute, two minutes?

21 A I guess. Not long. A short amount of time.

22 Q And then did you lead him back out through the
23 crowd to the outside of the place?

24 A Yes, I did.

25 Q Grabbing his hand as well?

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1 A I don't remember if I was holding his hand at
2 that point.

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3 Q You don't remember if you had what?
4 A If I was holding his hand at that time.
5 Q But so we're clear, the first physical
6 touching in your life that you had with Austin Scott was
7 when you grabbed his hand at the saloon, took him
8 through the crowd and then took him back; is that right?
9 A No.
10 Q When, prior to that, did you have physical
11 contact with Austin Scott?
12 A I'm not sure how long before this, but it was
13 somewhere while we were talking through text messaging;
14 and one day I met him at a pizza place downtown, and at
15 that time he gave me a hug hello.
16 Q Did you hug him back?
17 A Yeah.
18 Q With that exception, this was then only the
19 second time you had physical contact with him, right?
20 A I guess so.
21 Q Did you tell him where you were taking him --
22 A No.
23 Q -- when you left the saloon?
24 A No.
25 Q Had you decided at that time that you were

45

1 going to go back to Austin Scott's bedroom?
2 A I never -- no, I didn't like actually decide.
3 It was just kind of we were walking and that's where we
4 ended up, but I never --
5 Q You never decided to go there --
6 THE REPORTER: Okay. You're talking over
7 each other. What was the question? I'm sorry.

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8 MR. KAROLY: You never decided to go there,
9 and I think your answer was I never thought about it?

10 THE WITNESS: No, not really. I didn't know
11 where we were going. I didn't know if we were going
12 somewhere else or if we were going to his place.

13 BY MR. KAROLY:

14 Q The bars were closing at this hour; is that
15 right?

16 A I don't know what time it was, so I couldn't
17 tell you.

18 Q Well, as a barmaid, what time do the bars
19 close?

20 A They close at 2.

21 Q Okay. Was this close to closing time?

22 A I'm sure it was around that time.

23 Q Uh-huh.

24 A But I'm not certain. I don't know.

25 Q So you get outside of the saloon; and in order

46

1 to get to your apartment, you go to the left or to the
2 right?

3 A I would actually have to call a taxi. It's
4 not in walking distance at all, so I wouldn't go either
5 way.

6 Q Okay. So you never had the intention when you
7 took Austin Scott outside of the saloon to go back to
8 your apartment, did you? That you had the intention for
9 you to go back to your apartment, otherwise you would
10 have called a cab.

11 A We were just walking and talking, so I didn't

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12 think about where I was going next.
13 Q So you were just wandering the streets of
14 downtown with Austin Scott; is that right?
15 A Pretty much, yes.
16 Q Not knowing where you were going?
17 A We were just walking and talking.
18 Q And you'd have the Court to believe that all
19 of a sudden you wound up at Austin's apartment without
20 knowing you were going there?
21 A What's the question?
22 Q As you walked out of the saloon, did there
23 come a point in time on the trip to Austin's bedroom
24 that you had the realization that you were, in fact,
25 going to his bedroom?

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1 A Yes.
2 Q When was that?
3 A That's when I stopped him and told him that I
4 had no intention of having sex with him.
5 Q Okay. Was this before or after you met with
6 another gentleman that knew Austin?
7 A This was before.
8 Q Okay, before. It was then that you knew you
9 were going to Austin's apartment to his bedroom how?
10 A Because we were walking in that direction and
11 -- I don't know.
12 Q How did you know where Austin's apartment and
13 bedroom were?
14 A Because he had told me before.
15 Q When did he tell you that?
16 A I don't remember exactly when.

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17 Q well, weren't you walking in the direction of
18 his apartment the moment that you stepped foot outside
19 the saloon?

20 A I guess you could say that.

21 Q So if the indication was that you were going
22 to his apartment because you were walking in that
23 direction, you walked in that direction from the moment
24 you left the saloon; is that right?

25 A Yes, but I also walk in the direction of many

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1 other places as well. It wasn't just in like a straight
2 narrow path to his place.

3 Q well, let me ask you this. Did you ever take
4 any direction in your walk that led anywhere other than
5 directly to Austin Scott's apartment and his bedroom?

6 A We were walking College Ave., so I'm not sure
7 what you're asking me.

8 Q Okay.

9 A We were walking College Ave., so there's many
10 different places that you can go.

11 Q Okay. Was any step that you took a deviation
12 from the route to Austin Scott's apartment?

13 A No.

14 Q Okay. And you told the Judge that you knew
15 you were going to Austin Scott's apartment when you were
16 headed in that direction. So is it fair to say that
17 since you knew you were headed in that direction the
18 moment you left the saloon, you knew you were going to
19 his apartment at that time?

20 A It was once we got to McLanahan's that I

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21 realized where we were going.
22 Q What happened at McLanahan's that gave you
23 that realization?
24 A I don't know. I just realized at that point.
25 I don't know if we were talking about and then that's

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1 when I realized.
2 Q You don't know if you were talking about it?
3 A It just -- I -- that's when I realized. I
4 don't know.
5 Q I'm sorry. Did you say you didn't know
6 whether you were talking about going back to his bedroom
7 or not?
8 A Yes, I did say that.
9 Q Okay. And do you have any idea the reason why
10 you tell the Judge you don't recall whether or not you
11 were discussing going back to Austin's bedroom at that
12 time?
13 A No.
14 Q Okay. And by the way, at McLanahan's, was the
15 male companion that joined you in your company at
16 McLanahan's?
17 A No, he was not.
18 Q He was in your company after that?
19 A Yes.
20 Q Okay. Now, according to the communications
21 you had with Mr. Scott, you recall saying what to him
22 about having sex?
23 A I told him that I was not going to have sex
24 with him.
25 Q And that came out of nowhere; is that right?

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1 A For the most part, yes.
2 Q okay. You weren't talking about having sex?
3 A No.
4 Q And did you say something about that you
5 wanted him to respect you?
6 A Yes.
7 Q Did you ever hear the phrase about a woman
8 saying that she wants a man to respect her in the
9 morning?
10 A No.
11 Q Never heard that before? So you told him
12 that, but still continued to go into his bedroom,
13 correct?
14 A Yes.
15 Q And I think you indicated that he said, "well
16 then, I'll call a taxi"; is that right?
17 A Yes.
18 Q And you said your response was what?
19 A Yes.
20 Q To call a taxi?
21 A Yes. I laughed and I said, "Sure."
22 Q I'm sorry. What --
23 A I laughed and I said, "Sure."
24 Q Okay. You didn't mean that, right?
25 A Yes, I did. If his only intentions were to

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1 have sex with me, then, yes, I did mean it.
2 Q Well, if he had other intentions and that is

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3 talking with you, spending some time and then having sex
4 with you, would that be satisfactory to you?

5 A No.

6 Q No. Is there any reason you didn't tell the
7 police at any time that the response to calling the taxi
8 was, "Sure"?

9 A I did tell the police.

10 Q You did tell them that?

11 A Yes.

12 Q Did you ever even stop walking when you were
13 having this discussion?

14 A Yes, because I stopped and I looked at him
15 and I -- that's when I said that to him.

16 Q And, again, this is before there was a
17 third-party witness to corroborate anything you're
18 saying now; is that correct?

19 A Correct.

20 Q And then what did Mr. Scott say to you in
21 response?

22 A He said, "Could I at least cop a feel?"

23 Q Austin Scott said to you at that point, "May I
24 just cop a feel"?

25 A Yes.

□

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1 Q Have you ever -- outside of television, have
2 you ever heard that phrase since the 1960s?

3 A I'm not sure. I wasn't born in the 1960s, so
4 I'm not sure.

5 Q Okay. As a bartender, as a student, as an
6 adolescent, did you ever hear anybody use a phrase like
7 that?

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8 A Yes, I have.
9 Q And who said that before?
10 A I don't --
11 MR. MARSHALL: Objection. Objection.
12 THE COURT: Sustained. Sustained.
13 BY MR. KAROLY:
14 Q And your answer was you laughed and said no?
15 A Correct.
16 Q And at this point, you continued to go to
17 Austin Scott's bedroom?
18 A At this point -- I think that after that we
19 started walking.
20 Q In the direction of Austin Scott's bedroom?
21 A Down College Avenue.
22 Q Right. And you knew where you were going
23 then, you told the Judge, right?
24 A Sure.
25 Q By that time, you had the realization of where

53

1 you were headed, to Austin Scott's bedroom, correct?
2 A Yes.
3 Q All right. And now, when does this other
4 male join you?
5 A He was walking out of McDonald's.
6 Q And was he introduced to you?
7 A No.
8 Q Just joined the two of you and walked with
9 you?
10 A Yes.
11 Q Do you remember any of the conversation that

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12 took place between that point and your arrival at the
13 apartment?

14 A He offered Austin some McDonald's french
15 fries; kept trying to get him to eat a french fry. They
16 talked about cell phones, because I remember Austin
17 saying how his mom pays his cell phone bill and said
18 something about a car.

19 Q When did you stop holding hands with Austin
20 scott, if at all, on the way to his bedroom?

21 A It would have been in the Saloon. I didn't
22 hold his hand at all on the way to his bedroom. I
23 didn't hold his hand at all while we were out on the
24 street.

25 Q Okay. Did you wind up holding his hand again

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1 before entering his bedroom?

2 A No.

3 Q Okay. So did there come a point in time that
4 you had to walk up a series of stairs -- series of
5 steps?

6 A Yes.

7 Q Hundreds of steps?

8 A Yes.

9 Q Didn't have any difficulty ambulating those
10 steps, did you?

11 A No.

12 Q By the way, did you tell anybody at that time
13 that you were tired?

14 A No.

15 Q Did you say anything --

16 A I'm not sure.

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17 Q Did you say anything in the presence of that
18 other male who walked from there all the way to the
19 apartment, anything about your not wanting to engage in
20 sex?

21 A No.

22 Q When you got to the steps, you had no
23 difficulty climbing all the steps; is that right?

24 A No.

25 Q Meaning, yes, that is correct; you had no

55

1 difficulty?

2 A I had no difficulty.

3 Q Okay. And where did you part company with the
4 other male friend?

5 A It was, I guess, when we got to his place,
6 which is right -- it was diagonal from Austin's.

7 Q When you said, his place, was it inside the
8 structure of the building or was it outside?

9 A It was outside. His was on the way onto the
10 pathway of Austin's.

11 Q Okay. All right. And then from that
12 departure, did you hear what was said when the two of
13 you parted company from him?

14 A I'm sorry. Can you repeat the question?

15 Q Yeah. Was there any communication that you
16 made or that you heard the other male make or Austin
17 make upon this departure from your group of two?

18 A Besides saying bye, not really.

19 Q Okay. And then you headed directly towards
20 Austin's apartment; is that right?

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21 A Yes.

22 Q Did you discuss anything on the way up to his
23 apartment?

24 A I don't remember. I'm sure we did discuss,
25 but I don't remember what was being said.

56

1 Q Now, did you tell anybody at any time you
2 weren't coming home that night or those early morning
3 hours?

4 A No, I did not.

5 Q Is it your custom to do that?

6 A If somebody asked me, I would tell them what
7 my intentions were; but nobody asked so, no.

8 Q Did you tell anybody at Tony's that you were
9 going to be hooking up with Austin Scott?

10 A No, I did not.

11 Q So you went up to his apartment; is that
12 right?

13 A Yes, I did.

14 Q And when you arrived at his apartment, there
15 is an area, a lounge area, with two large sofas, a love
16 seat, a TV; is that correct?

17 A I'm not sure of the exact -- but, yes, there
18 is a lounge area.

19 Q You can't get to his bedroom without going
20 through the lounge; is that right?

21 A Correct.

22 Q But instead, you headed directly to the
23 bedroom; is that right?

24 A I followed him in the bedroom.

25 Q Went right in, no hesitation, no questions,
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□

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1 right?

2 A Yes.

3 Q You didn't say, why are we going into the
4 bedroom, what am I doing in here?

5 A No.

6 Q You didn't say, I just want to talk; we can
7 talk out there?

8 A No.

9 Q You didn't say, I just want to watch TV;
10 there's a big TV out there?

11 A No.

12 Q Okay. You went right into the bedroom, no
13 questions asked; is that right?

14 A Correct.

15 Q And you went into the bed?

16 A I stood standing. He went to the bathroom.

17 Q Did you use the bathroom at that time?

18 A I don't remember. I don't remember if I had
19 to use the bathroom.

20 Q So when do you remember hopping into Austin's
21 bed?

22 A When he made room for me and told me to sit
23 down.

24 Q And what do you claim you took off before you
25 went into his bed?

□

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1 A My shoes and my socks.

2 Q Are you sure that's all you took off?

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3 A Yes.

4 Q And as you sit there today telling the story
5 to the Judge, you're telling him that you have no idea
6 how your jeans came off; is that right?

7 A I do not know.

8 Q None at all?

9 A No.

10 Q No recollection of that even?

11 A No.

12 Q What kind of jeans were you wearing?

13 A They were American Eagle, and they have a
14 button and a zipper.

15 Q I'm sorry. They had what?

16 A A button and a zipper.

17 Q A button and a zipper?

18 A Yes.

19 Q Okay. Were they loose-fitting or were they
20 tight?

21 A They were loose-fitting. They are stretch
22 jeans. After you wear them, they get pretty loose.

23 Q Would it be fair to say that in order to get
24 your jeans off when you're laying in the bed, you'd have
25 to lift up your buttocks to get the jeans off? Wouldn't

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1 that be a correct statement?

2 A Umm, no.

3 Q No? How would you get your jeans off without
4 doing that?

5 A You can slide them off.

6 Q With you sitting in the seat of the jeans?

7 A I never tried it, so I don't know.

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8 Q When you got into the bed, how long were you
9 sitting and how long were you laying down in the bed?
10 A I'm not sure how long it lasted. I guess --
11 I laid down immediately, and we were --
12 Q Why did you go to his bedroom and immediately,
13 according to you at least, take off your shoes and your
14 socks and lay down in Austin Scott's bed? Why did you
15 do that?
16 A Why?
17 Q Why?
18 A I don't know.
19 Q No idea?
20 A Nope.
21 Q What did you think was going to happen in
22 Austin Scott's bed?
23 A I thought we were going to talk and watch TV.
24 Q And what gave you that impression?
25 A Because he turned on the TV, and we started

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1 talking.
2 Q And you knew there was a TV in the room you
3 had just passed through.
4 A No, I don't remember seeing --
5 Q Didn't see it there?
6 A No.
7 Q Nothing prevented you from talking in that
8 room, did it?
9 A No.
10 Q Did you realize that there were roommates
11 present at that time?

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12 A No, I didn't know.
13 Q So you thought you had the lounge area to
14 yourself as well?
15 A I didn't think about it at the time.
16 Q Were you thinking about much at that time?
17 A Just the conversation that we were having.
18 Q And in the conversations that you were having,
19 did you tell Mr. Scott that you had come out of rehab?
20 MR. MARSHALL: I'm going to object. It's
21 completely irrelevant.
22 MR. KAROLY: It's totally relevant, Your
23 Honor. This is an issue of consent, force, lack of
24 force, lack of compulsion. And if the conversation is
25 such that negates that element of the offense, it's

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1 appropriate.
2 MR. MARSHALL: How does whether she was in
3 rehab negate that?
4 THE COURT: I don't see how the answer,
5 either yes or no of coming out of rehab, is going to
6 show --
7 MR. KAROLY: All right. Let me ask it this
8 way.
9 BY MR. KAROLY:
10 Q Tell the Judge what the content of that
11 conversation was with Mr. Scott while you were laying in
12 his bed.
13 A We talked about a lot of different things.
14 We talked about my brother. I have an older brother.
15 We talked about how he doesn't know his biological
16 father, we talked about tattoos; we talked about a lot

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17 of different things.

18 Q How long did those discussions go on?

19 A Until I fell asleep.

20 Q For what period of time?

21 A I don't know how long.

22 Q Could you approximate for the Court?

23 A Maybe a half-hour.

24 Q You talked for a half-hour, and then it's

25 your testimony under oath that you fell asleep?

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1 A Yes, it is.

2 Q And what's the last thing you remember doing
3 before you fell asleep?

4 A Talking.

5 Q And did you fall asleep on your back?

6 A Yes.

7 Q But you don't know whether you fell asleep on
8 top of the covers or underneath the covers?

9 A No, I do not.

10 Q What was your intention of doing after the
11 talking in those early morning hours?

12 A Sleeping.

13 Q Sleeping in Austin Scott's bed?

14 A Yes. Once I got there, yes.

15 Q Was something wrong with your bed at your
16 apartment?

17 A No.

18 Q Was there some reason you didn't go to your
19 bed if all you intended to do was sleep?

20 A Just the fact that I was far away.

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21 Q Well, didn't you have to return there sooner
22 or later?
23 A Yes.
24 Q You weren't planning to stay at -- well, how
25 long were you planning to stay at Austin Scott's?

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1 A I don't know.
2 Q Were you planning to stay there the entire
3 next day?
4 A Probably not. I had work.
5 Q What time did you have to go to work?
6 A Umm, I don't remember what time I was
7 scheduled to go in.
8 Q The first thing that you remember is being
9 awakened by, I think you said, Mr. Scott trying to have
10 sex with you?
11 A Correct.
12 Q And you were on your back?
13 A Yes.
14 Q And where was Mr. Scott?
15 A He was on top of me facing toward me
16 (indicating).
17 Q And now somehow without you waking up,
18 according to you, your jeans were off?
19 A Yes.
20 Q Okay. And you woke up; is that right?
21 A Yes.
22 Q Did you say anything?
23 A Yes.
24 Q What'd you say?
25 A I said no.

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1 Q Did you ever tell the police that interviewed
2 you that you said no?

3 A Yes.

4 Q To whom did you say that?

5 A The police officer who came to Shortlidge.

6 Q Who? What was his name?

7 A I don't know his name.

8 Q And you told him that when you woke up
9 and Mr. Scott was attempting to have sex with you, you
10 said the word no?

11 A Yes. I said I started to say the word no when
12 he hit me.

13 Q You started to say the word no?

14 A Yes.

15 Q How much of the word no, tell the Judge, did
16 you get out?

17 A I don't know. I'm not sure.

18 Q Uh-huh. And that's when he hit you on your
19 back?

20 A Correct.

21 Q Would you tell the Judge how it's physically
22 possible to hit you on your back when you're laying on
23 your back and Mr. Scott is on top of you?

24 A Because as I was saying no, I started to shift
25 my body forward and over to the side. And at that time,

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1 I felt the jolt in my back.

2 Q You felt a what?

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3 A A jolt.

4 Q A jolt?

5 A A hit.

6 Q Didn't you tell the Judge also that at that
7 time Mr. Scott's hands were on your hands?

8 A No. His one hand was bracing my (indicating)
9 left arm, and he hit me on my right side.

10 Q Didn't you tell the Judge that his hands were
11 on both arms or both biceps, only one there was more
12 pressure than the other? Wasn't that your testimony?

13 A That was afterwards, after he had hit me.

14 Q So he was balancing with one hand. What hand
15 was that?

16 A I guess it would be (indicating) his right
17 hand, and he hit me with his left.

18 Q Balancing with his right hand, trying to
19 penetrate you with no hands assisting, and punching you
20 with his left hand in your back; is that right? Is that
21 right?

22 A He hit me --

23 Q But you didn't see him hit you, did you?

24 A I saw his arm go -- pull back (indicating).

25 Q Did you tell the police that?

□

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1 A Yes, I did.

2 Q You did? Did you tell the police that you
3 felt a jolt that was sort of like a punch or words to
4 that effect?

5 A I don't remember my exact words. When I saw
6 the police I was pretty flustered, so I don't know. I
7 didn't exactly say that. I'm not sure, but --

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8 Q well, how many times did you tell the story to
9 the police?

10 A I told the police when they first got there;
11 and then I told the detective in her office, I guess the
12 morning after.

13 Q well, did you tell them, first of all, with
14 regard to the first instance, that you felt an attempt
15 was made to penetrate you through your underwear the
16 first time?

17 A I'm not sure what my exact words were.

18 Q okay. well, was there an attempt, according
19 to you?

20 A He tried to start to penetrate me, and then he
21 did.

22 Q And suddenly you felt something on your back.
23 "I felt a -- this is a quote from the Police Affidavit.
24 "I felt a jolt. It felt as though it were a punch", end
25 quote. Is that what you told the police?

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1 A If it's a quote, then I guess so.

2 Q Yeah. well, obviously, if you saw a punch,
3 you wouldn't say it felt as though it were a punch. You
4 would say, I saw a punch, right?

5 MR. MARSHALL: Objection. This is all
6 argumentative. This is all for another day. We've been
7 here for about an hour now -- more than an hour, and
8 he's just now beginning to get into the bedroom. We
9 have to move this forward. He's arguing with the
10 witness, so I guess that's the bottom line. It's
11 argumentative.

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12 MR. KAROLY: I'm sure the Commonwealth would
13 like to move this forward and not have me question about
14 the force or compulsion -- forcible compulsion here.
15 But since that's the most significant element of this
16 case, Your Honor, I should be permitted to question
17 whether or not what she's saying now is what she recalls
18 happening. Now she's indicated that the statement must
19 be accurate. I've simply asked her the question, if the
20 statement is that it felt as though it were a punch,
21 wouldn't that be an indication that she didn't see it?
22 And that's where the objection came. I think that's a
23 very significant question to be asked and for you to
24 hear the answer to.
25 THE COURT: Go ahead and answer the

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1 question.
2 MR. KAROLY: Thank you.
3 THE WITNESS: I did see his hand go back,
4 but I didn't see his hand making contact with my back.
5 BY MR. KAROLY:
6 Q Well, if you saw his hand go back, is there
7 some reason you didn't see it come forward?
8 A It was on the side, and I was facing forward.
9 Q Okay. So if it was on the side and you were
10 facing forward, you wouldn't even see it go back; isn't
11 that right?
12 A I didn't see it go back, no.
13 Q And do you have any marks demonstrated from
14 that?
15 A I did.
16 Q Were there photographs taken of the marks?

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17 A Yes, there was.
18 Q And where are those photographs?
19 A Where were they taken?
20 Q Do you know where they are today?
21 A No, I do not.
22 Q And why don't you, for the record, describe
23 the mark that you say that you observed.
24 A I immediately turned -- started turning red on
25 my back.

□

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1 Q I'm sorry. What's that?
2 A My back started to turn red.
3 Q Uh-huh. And how did you know that?
4 A Because I looked at it.
5 Q And how, during the course of this, did you
6 look at your back -- that it was immediately turning
7 red? How is that possible?
8 A I didn't look, like, immediately. I know
9 there was a mark whenever I was at the hospital. I
10 turned around and looked at my back.
11 Q Hours later at the hospital you saw redness
12 there?
13 A It wasn't hours later; but, yes, I did --
14 Q Again, I apologize. I didn't hear what you
15 said.
16 A It wasn't hours later when I saw red on my
17 back.
18 Q It wasn't hours later?
19 A No. I immediately went to the hospital.
20 Q Well, from the moment that you say you felt as

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21 though there was a punch to the time you arrived at the
22 hospital, tell the Judge how much time elapsed.
23 A I'm not sure, maybe -- I snuck out
24 immediately, and the police came out right away and I
25 went to the hospital right away.

□

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1 Q You keep saying "immediately". Do you mean
2 immediately?

3 A Yes, I do.

4 Q So immediately when you felt as though it were
5 a punch, you tried to sneak out and then went to the
6 hospital?

7 A No, I waited till he fell asleep and then I
8 snuck out. Immediately after he fell asleep, I went and
9 called a friend; and then the police came and then I
10 went to the hospital.

11 Q Let me try to -- immediately after you thought
12 you felt a punch, you tried to sneak out of the
13 apartment; is that correct?

14 A No, when he fell asleep.

15 Q Okay. How much time elapsed there?

16 A I'm not sure.

17 Q So you thought you felt a punch and then he
18 fell asleep?

19 A I felt a punch, and then he tried to have sex
20 with me. Then he did have sex with me and various
21 things occurred.

22 Q Let's get to that. He tried to have sex with
23 you. So that was unsuccessful; is that right?

24 A When I first woke up, he was just trying to
25 have sex with me. He was trying to put his penis into

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1 my vagina, and my underwear were in the way and --

2 Q And that was unsuccessful, am I correct?

3 THE REPORTER: They're talking over each
4 other. This is getting --

5 THE COURT: Yeah, you are definitely talking
6 over the end of her answers. Go ahead. "When you first
7 woke up" --

8 THE WITNESS: When I first woke up, it was
9 to him facing towards me trying to put his penis into my
10 vagina, and then I shifted around.

11 BY MR. KAROLY:

12 Q Okay. Do you remember the question that led
13 to this? You said "trying". That means he wasn't
14 successful; is that right?

15 A He eventually was successful.

16 Q Well, at that time he wasn't successful
17 because you had your panties on; is that right?

18 A Yes.

19 Q Okay. And then he took your panties off?

20 A Yes.

21 Q And how did he do that?

22 A With his hands.

23 Q Took his two hands and took your panties off.

24 How was he positioned at that point in time?

25 A He was facing towards me kneeling.

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1 Q Kneeling on the bed?

2 A Correct.

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3 Q Okay. And do I understand that you didn't say
4 no at that time?

5 A I said no before that and --

6 Q Let's try my question. Okay? Do I understand
7 you didn't say no at that time?

8 A No.

9 Q Is it correct that you did not say no at that
10 time?

11 A I'm kind of confused.

12 Q Okay. Let me do it this way.

13 THE COURT: Yeah, I do think she's confused
14 on the question.

15 BY MR. KAROLY:

16 Q All right. Did you say no at that time?

17 A At which time?

18 Q At the time he began to take your panties off?

19 A No.

20 Q Okay. Did you say stop at that time?

21 A No.

22 Q Did you say, I don't want to have sex with
23 you, at that time?

24 A No.

25 Q Did you say, Don't penetrate me, at that time?

73

1 A No.

2 Q Okay. And he took your panties off, and then
3 you had sex?

4 A Then he put his penis in my vagina.

5 Q wouldn't your legs have to be spread for that
6 to happen?

7 A I'm sure there's a way to --

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8 Q well, were your legs spread for that to
9 happen? You tell the Judge.

10 A My legs were on the bed, and I was laying flat
11 down and he started to come -- he put his legs in
12 between mine and started to penetrate me.

13 Q Uh-huh. Well, once again, you didn't say a
14 word during any of this; is that right?

15 A No.

16 Q Meaning that is correct, you did not say a
17 word, correct?

18 A At that time -- at that very second, no.

19 Q Okay. And how long did this go on?

20 A I don't know the exact time.

21 Q Well, could you approximate for the Court how
22 long this went on?

23 A I really don't know.

24 Q And by the way, this punch, when you say you
25 started to sit up, how far off the bed did you get?

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1 A At least a foot, foot and a half.

2 Q Okay. Foot and a half off the bed? Under the
3 covers?

4 A No.

5 Q On top of the covers?

6 A I don't know where the covers were. I just
7 know I wasn't underneath the covers.

8 Q Okay. If Mr. Scott wanted you to lay back
9 down, he certainly could have pushed you back down,
10 correct?

11 A Correct.

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12 Q But instead, you felt something that was like
13 a punch?
14 A Correct.
15 Q Okay. Did you say to him, Don't hit me?
16 A No.
17 Q Did you say to him, You just hit me?
18 A No.
19 Q Okay. You don't know how long that sex took;
20 is that right?
21 A No, I do not.
22 Q And after that, you got on top of Mr. Scott;
23 is that right?
24 A After that, he pulled me by my arm and flipped
25 me on top of him and said, Get on top of me; so I did.

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1 Q So you did?
2 A Yes.
3 Q And did you tell the police in your statement
4 to them that you were just going along with this?
5 A Yes.
6 Q Uh-huh. Didn't, once again, tell him no you
7 didn't want to get on top, right?
8 A No.
9 Q And once again, you didn't say stop?
10 A No.
11 Q And once again, you didn't say don't or any
12 words to that effect?
13 A No.
14 Q And at no time during any of this did you
15 physically resist in any fashion; is that correct?
16 A Yes, I did. When -- the first initial -- when

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17 I tried to sit up.

18 Q That was your resistance, you tried to sit up?

19 A Yes, and I tried to move; but I got punched
20 and I didn't want --

21 Q Besides trying to sit up --

22 MR. MARSHALL: Wait a second. He then
23 talked over her answer again. I think that last part
24 was an important point. I don't know if you heard it or
25 not. I don't know if it was --

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1 MR. KAROLY: If it was, it wasn't responsive
2 to my question and I would object to it any way.

3 THE COURT: I've heard her answer for about
4 the second time. Okay? Do you want to ask the question
5 again?

6 MR. KAROLY: Yes.

7 BY MR. KAROLY:

8 Q So your statement to the court is the only
9 time you did anything which you thought was resistant
10 was to sit up; is that right?

11 A And I also tried to move when I started to go
12 back down, but it was pointless.

13 Q You tried to move where?

14 A Towards the side. Like I started squirming a
15 little bit. But at that time, that's when I got the
16 pressure on my arms; so I couldn't move.

17 Q At that time you got pressure on your arms?

18 A Yes.

19 Q How was Austin able to penetrate you if he had
20 his arms on your arms?

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21 A I'm not sure I understand the question. His
22 penis was in my vagina and his arms were on mine.
23 Q So it was unassisted getting there, by either
24 you or Mr. Scott?
25 A I guess so.

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1 Q And how about when you were on top of him,
2 unassisted by Mr. Scott?
3 A His one hand was on my back and then he used
4 his other hand to force me down -- well, he used this
5 hand to force me to get on top of his penis and he used
6 his other hand to direct it into my vagina.
7 Q I'm sorry. The first part I didn't
8 understand. He what?
9 A He used this hand (indicating), his left hand,
10 on my back to push me down toward his penis; and he used
11 his right hand to direct it in.
12 Q I see. Where were your hands at that time?
13 A Off to the side.
14 Q Didn't do anything with your hands even to
15 indicate that you weren't enjoying what was happening,
16 right?
17 A I thought I made him aware of that.
18 Q Did you answer my question?
19 A No, not with my hands. No.
20 Q Do anything with any other part of your body?
21 A No.
22 Q And then you went up and down on his penis,
23 did you not?
24 A Yeah.
25 Q Now, tell the Judge how long you went up and

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1 down on his penis.

2 A I don't know.

3 Q More or less than 15 minutes?

4 A I honestly don't know.

5 Q Uh-huh. Were you saying things to him at that
6 time?

7 A No.

8 Q No? Did you ever suggest for one minute that
9 you weren't enjoying it during the 15 minutes or so you
10 were going up and down on his penis?

11 MR. MARSHALL: Objection; assuming facts not
12 in evidence. No one ever said 15 minutes.

13 THE COURT: There was no testimony about 15
14 minutes.

15 BY MR. KAROLY:

16 Q During whatever period of time you were going
17 up and down on his penis, did you ever suggest to him
18 that you weren't enjoying what you were doing?

19 A I thought my face was a suggestion, but I
20 guess not.

21 Q Your face was a suggestion?

22 A Yes.

23 Q Did you ever tell him that you didn't enjoy,
24 in the least bit, anything --

25 A At this time I wasn't saying anything.

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1 Q Okay. And by the way, were the lights on in
2 that room?

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3 A There was light coming from somewhere, but I
4 don't know where.

5 Q Well, were there overhead lights?

6 A Like I said, I don't know where the lights
7 were coming from.

8 Q Uh-huh. And you thought he could see it in
9 your face, is that what you're saying?

10 A Yes.

11 Q I see. And after you were done going up and
12 down on Mr. Scott's penis, what then did you do?

13 A He then flipped me over and put me on my back
14 again.

15 Q Okay. Now, when you say he flipped you over,
16 okay, what precisely do you mean?

17 A My body went one way, like the force from him,
18 and he got on top of me. So, I mean, he put me back
19 onto my back.

20 Q And did he come outside of you during that
21 maneuver or he remained inside?

22 A He came outside.

23 Q Uh-huh. Not only, according to your own
24 testimony, did he come outside of you, but he left the
25 bed to go get a towel, did he not?

80

1 A No, the whole time he's still in bed. He
2 reached and got a towel from somewhere else.

3 Q So when did he get the towel?

4 A At that time when he flipped me over and put
5 me on my back.

6 Q Flipped you over, put you on your back, and
7 then he got a towel?

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8 A Yes.

9 Q And he put the towel underneath you?

10 A Yes.

11 Q How did he put the towel underneath you,
12 unless you lifted up your buttocks to allow him to do
13 that?

14 A Because then he put the towel beside him and
15 moved me over onto the towel.

16 Q Did you object in any fashion?

17 A I didn't say anything.

18 Q Did you do anything to resist going on the
19 towel, as you say?

20 A No, I did not.

21 Q Did you do anything to resist his penetration
22 of you again?

23 A No, I did not.

24 Q And then you had intercourse again; is that
25 right?

□

81

1 A Then he started to have sex with me again.

2 Q Pardon me?

3 A Yes, he started to have sex with me again.

4 Q Yeah. Well, he had sex with you; but you
5 didn't have sex with him?

6 A I don't look at it that way, no.

7 Q I understand that. Were you moving at that
8 time at all?

9 A No.

10 Q Uh-huh. Where were your legs?

11 A Off to the side.

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12 Q off to the side of what?
13 A His body. He was in between my legs, and he
14 was pushing on my legs outward.
15 Q Your legs were spread, and he was in between
16 your legs?
17 A Yes.
18 Q Where were his hands?
19 A On my legs.
20 Q On your legs? How long did this -- sex in
21 this position last?
22 A I don't know.
23 Q Again, during any of this intercourse, did you
24 say stop?
25 A No.

82

1 Q Did you say, I don't like this?
2 A No.
3 Q Did you say, I don't want this?
4 A No. Towards the end --
5 Q Did you take any physical action to avoid this
6 happening?
7 A I started crying and I told him it hurt, and
8 that's all I did.
9 Q Okay. So my question was, Did you take any
10 physical action to prevent this from happening or even
11 indicate that it shouldn't be happening?
12 A Like hitting him? No.
13 Q Like pushing him off?
14 A No.
15 Q Like closing your legs? Nothing like that?
16 A No.

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17 Q All right. And you said you started to cry
18 because it hurt?

19 A Yes, and because I couldn't handle it anymore.
20 I just wanted it to be over.

21 Q Again, I'm sorry. Maybe you're getting too
22 close to the microphone. I couldn't hear any of that.

23 A I started to cry, because I just -- I wanted
24 it to be over. I wanted it to end, and it was hurting
25 bad at that point.

83

1 Q Uh-huh. And you said you told him it was
2 hurting?

3 A Yes.

4 Q Uh-huh. And those are your words, "It hurts"?

5 A Yes.

6 Q And you continued to have sex?

7 A He continued to have sex with me, yes.

8 Q Uh-huh. For what period of time?

9 A I don't know.

10 Q Okay. Did you climax during the course of
11 these interludes?

12 A No, I did not.

13 Q Did you tell him you didn't?

14 A No.

15 Q Did you mention anything like that?

16 A No.

17 Q Did you act in a fashion consistent with that?

18 A No.

19 Q Then what happened?

20 A Then I -- next thing, he rolled over and he

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21 started to fall asleep and I waited till he fell asleep
22 and I began to sneak out.
23 Q okay. He rolled over and fell asleep?
24 A Yes.
25 Q How long between the rolling over and the

84

1 falling asleep?
2 A I'm not sure of the exact time.
3 Q Well, we're not asking you to be exact. I'm
4 sure you didn't have a stopwatch there.
5 A I'm not sure.
6 Q Could you just approximate for the Court?
7 A I really don't know.
8 Q Are we talking minutes, are we talking hours,
9 are we talking seconds?
10 A Minutes.
11 Q Could you approximate how many minutes?
12 A Probably under 10.
13 Q Under 10. And after a period of time under 10
14 minutes, you said you got up to leave; is that right?
15 A Once I knew he was sleeping.
16 Q And how did you know he was sleeping?
17 A Because I looked at him.
18 Q Uh-huh. And you got up, and what did you do?
19 A I snuck up to the end of the bed, and I
20 gathered all my stuff up and put my jeans on; my shirt
21 was still on, and I just had to pull it up and put my
22 shoes and socks on and grabbed my purse and walked out
23 the door.
24 Q Did you go into the bathroom at that time?
25 A No.

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85

1 Q where was your clothing?
2 A Scattered throughout the room.
3 Q where was your clothing?
4 A On the floor.
5 Q okay. Do you know where on the floor?
6 A No.
7 Q By the way, was any of your clothing ripped in
8 any fashion?
9 A No.
10 Q Not even your panties that were trying to be
11 penetrated through?
12 A No.
13 Q And did you say that Austin's phone went off
14 before you left, while you were dressing, or exactly
15 when?
16 A When my hand was on the doorknob after I had
17 already put my shoes and socks on.
18 Q You were already completely dressed?
19 A Yes.
20 Q And your hand was on the doorknob?
21 A Yes.
22 Q And his cell phone went off?
23 A Yes.
24 Q where was his cell phone?
25 A It was on a side table right next to his bed.

86

1 Q Uh-huh. And you didn't have sufficient time
2 to open the door and leave?

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3 A No.

4 Q why not?

5 A Because it went off, and then he looked at me
6 immediately and asked me what I was doing.

7 Q wouldn't that make sense, "what are you
8 doing"?

9 A I don't know.

10 Q okay.

11 A I don't --

12 Q And what was your answer?

13 A I said, "I can't sleep here, and I got to go
14 home."

15 Q Uh-huh. And did he say that he would get you
16 a taxi?

17 A No.

18 Q what did he say to you?

19 A He just asked me what I'm doing, and I
20 replied, "I can't stay here. I'm going home"

21 Q okay. Did you have any other communication
22 with him?

23 A No.

24 Q You just embraced and kissed?

25 A I kissed him, and then went out the door.

87

1 Q Did you embrace?

2 A I'm not sure what you mean by "embrace."

3 Q Hug?

4 A No.

5 Q Did you -- you know what French kissing is?

6 A No.

7 Q Did you put your tongue in his mouth?

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8 A No, I did not.
9 Q How many times did you kiss him?
10 A Once.
11 Q Uh-huh. And did you hug him at that time?
12 A No.
13 Q You didn't? What did you say after you kissed
14 him?
15 A Nothing. I turned and went towards the door.
16 Q You turned and what?
17 A I went towards the door.
18 Q Okay. Well, I thought your hand was already
19 on the doorknob, so you were -- you didn't have to go
20 towards the door; you were there.
21 A I left -- like, I let go of the handle, leaned
22 in (indicating), and then I went back out the door.
23 Q When you say "leaned in", the door was already
24 open?
25 A No, it was not.

88

1 Q And you're talking about the door at the entry
2 to the apartment?
3 A His bedroom, not the apartment.
4 Q Well, you came into his bedroom last. Did you
5 close the bedroom door when you came in?
6 A No, because he went to the bathroom; the door
7 was still open. And then after he came back from the
8 bathroom, he shut the door.
9 Q I thought you said he led you into the
10 bedroom, which would make you come in second.
11 A He did, but he put his stuff down and went

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12 back out to the bathroom.
13 Q Again, I didn't hear you. He what?
14 A He did lead me into the bedroom, but he put
15 his stuff down and said, "I'm going to the bathroom.
16 Make yourself comfortable."
17 Q By the way, the Muhammad Ali poster was in the
18 bedroom; is that right?
19 A Yes, it was.
20 Q Okay. And then you open that door and walked
21 through the lounge area, open the other door to the
22 apartment and left; is that right?
23 A Correct.
24 Q Okay. Now, it's your testimony you called
25 immediately at that point?

□

89

1 A Yes, immediately.
2 Q Is that right?
3 A Yes.
4 Q When you were leaving, you didn't say anything
5 like, "I have to leave because I didn't want to have sex
6 with you"?
7 A No.
8 Q You didn't say, "I have to leave because you
9 hit me"?
10 A No.
11 Q You didn't say, "I have to leave because you
12 did things to me that I didn't want you to do"?
13 A No, I didn't say that.
14 Q In fact, you didn't say anything that was
15 consistent with the story that you had had nonconsensual
16 sex, did you?

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17 A I'm not sure -- at the beginning I said no.

18 Q when you're leaving -- we understand the one
19 time that you claim that you said no when you were
20 leaving. My question now relates to, as you're saying
21 good-bye to Mr. Scott, either before or after you kissed
22 him and left, you didn't say at any time that anything
23 he did was inappropriate, did you?

24 A while I was leaving, I did not say anything,
25 no.

90

1 Q well, how about immediately before you were
2 leaving?

3 A No.

4 Q How about after you left?

5 A After I left, I told a friend.

6 Q I'm talking about Mr. Scott.

7 A No.

8 Q Did you tell Mr. Scott before you left that
9 you couldn't sleep, so that you might as well go home,
10 or words to that effect?

11 A I said, "I can't sleep. I'm going home".

12 Q Okay. Indicating to him that it was your
13 sleeplessness that was the basis for going home, not any
14 improper conduct by Austin; is that right?

15 A Correct.

16 Q And according to the Affidavit, you told the
17 police you started to walk off campus until you decided
18 to call a friend. Now, is that true or is it true that
19 when you closed the door you started calling your
20 friend?

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21 A I called my friend immediately. As I was
22 walking towards off campus, that's the direction I
23 headed, then I called my friend.
24 MR. KAROLY: Uh-huh. One moment, Your
25 Honor.

91

1 BY MR. KAROLY:
2 Q Now, can you give the Court an idea of what
3 time it is now when you leave the apartment?
4 A I'm not -- I don't know.
5 Q You don't know?
6 A No.
7 Q No idea whatsoever?
8 A Somewhere around 4 a.m.
9 Q By the way, this is fast-forwarding ahead a
10 little bit, but did you get any medical treatment for
11 what you said was a bruise on your back?
12 A They just took pictures of it.
13 Q Uh-huh. Do you have any photographs of your
14 back to demonstrate that whatever you claim was a bruise
15 was not there before?
16 A Not -- no.
17 Q Anything that you would have as evidence of
18 that?
19 A That I didn't have the bruise before this?
20 Q Correct.
21 A No, I do not.
22 Q Now, let me ask you this, Do you think that
23 seven shots of vodka with cranberry and one shot -- or
24 three-quarters of a shot of Crown Royal and a half a
25 glass of vodka and cranberry may have affected your

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1 ability to accurately recall --

2 A That's not --

3 Q -- what occurred? Please wait until my
4 question is over.

5 A That's not what I drank. But if I did drink
6 that much, yes. That's not what I had.

7 Q All right. Maybe my notes are wrong. Let's
8 get back to that. At Tony's, seven shots of vodka with
9 cranberry; is that right?

10 A No, there were seven glasses. Each glass had
11 less than a shot in it.

12 Q I'm sorry. Each --

13 A There were seven small, 9-ounce glasses. They
14 were plastic cups.

15 Q 9-ounce plastic cups?

16 A Each glass has less than a shot in it.

17 Q Well, who put the shots in there?

18 A The bartender.

19 Q And when you say, less than a shot, how much
20 goes in one of those drinks?

21 A I'm going to say a half to three-fourths of a
22 shot.

23 Q And is that the standard drink?

24 THE COURT: Okay. Let's get back to your
25 regular questioning.

93

1 MR. KAROLY: Okay. My question --

2 THE COURT: You have been given a lot of

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3 leeway here.

4 MR. KAROLY: Yes, sir.

5 THE COURT: Okay?

6 MR. KAROLY: No question.

7 THE COURT: And you know it. Okay?

8 MR. KAROLY: Yes, sir.

9 THE COURT: Let's get back to the first
10 questioning about the alcohol affecting her. What a
11 bartender does and that is for the trial, whether she
12 poured more than a shot or less than a shot. Let's
13 start getting down to the brass tacks. Okay?

14 MR. KAROLY: I understand that. Absolutely,
15 Your Honor.

16 BY MR. KAROLY:

17 Q You corrected me that I didn't have the
18 alcohol right. But whatever alcohol you consumed, the
19 question is, do you think it affected your ability to
20 recall the events of that evening?

21 A No.

22 Q Not at all?

23 A No, not the --

24 Q Pardon me?

25 A Not the important events.

□

94

1 Q Uh-huh. Now, were you aware that the phone
2 call that Mr. Scott got was from a female who wanted to
3 come over to his apartment at that time?

4 A No, I was not.

5 Q And you didn't hear that?

6 A No.

7 Q Anything about that?

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8 A No.
9 Q And that wasn't what caused you to leave?
10 A No.
11 Q So you weren't angry about it, because you
12 didn't know anything about it, right?
13 A I still, to this day, do not know who called
14 him.
15 Q Pardon me?
16 A I still don't know, to this day, who called
17 him.
18 Q Did you know it was a female wanting to come
19 over to his apartment?
20 A No, I didn't see; because I was already
21 leaving and I didn't see his phone -- who had called.
22 Q Uh-huh. Did he talk to that person on the
23 phone?
24 A No.
25 Q No. And just so I have this right, I didn't

95

1 get Keith's last name. You mentioned it, but I didn't
2 hear you. What is Keith's last name?
3 A Lesho.
4 Q Could you spell that, please?
5 A L-E-S-H-O.
6 Q Now, is he a boyfriend of yours?
7 A No.
8 Q Okay. Just a manager at your --
9 A He's a manager and a friend.
10 Q And you called him up. And what did you say
11 to him?

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12 A I was crying, and I told him that Austin had
13 hurt me; and he asked me where I was, and I told him
14 where I was at.
15 Q And how long did you talk to him?
16 A I can't be certain. Everything was happening
17 so quickly, and I was just crying hysterically. He was
18 more worried about coming to get me to make sure I was
19 okay.
20 Q Seems every question I ask is how badly you
21 were crying. The question is, For what period of time
22 -- how long were you speaking with him?
23 A A minute to two minutes. I'm not sure.
24 Q And, at any time, did you suggest to him that
25 you had engaged in nonconsensual sex with Austin Scott?

96

1 A Yes, I had.
2 Q And -- not have you. At that time, did you?
3 A Yes, I did.
4 Q In that phone call?
5 A Yes.
6 Q Uh-huh. Did you ever hear of a term "sexual
7 remorse", like buyer's remorse?
8 A No.
9 Q Were you having second thoughts about what
10 you did when you left Austin's apartment?
11 A No.
12 MR. KAROLY: No further questions, Your
13 Honor. Thank you.
14 THE COURT: Okay.
15 MR. MARSHALL: Just very quickly.
16

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REDIRECT EXAMINATION

17

18

19 BY MR. MARSHALL:

20 Q How tall are you?

21 A 5'5 and a half, 5'6"

22 Q And how much do you weigh?

23 A About 140 to 145.

24 MR. MARSHALL: Okay. Nothing else, Your

25 Honor.

97

1 THE COURT: Any Recross on that?

2 MR. KAROLY: No, Your Honor.

3 THE COURT: Okay. Thank you. You may step
4 down.

5

6 JANET R. CADY, called as a witness, being
7 sworn, testified as follows:

8

9 THE COURT: Have a seat and talk right into
10 the microphone.

11

12 DIRECT EXAMINATION

13

14 BY MR. MARSHALL:

15 Q Could you please state your name and spell
16 your last name.

17 A Janet Renee Cady; last name is C-A-D-Y.

18 Q And do you work?

19 A Date of birth is --

20 Q No, I'm sorry. Do you work?